

December 4, 2019

Mr. Robert J. Brittain  
Frederick Ward Associates  
P.O. Box 727  
5 South Main Street  
Bel Air, MD 21014

RE: Franklin High School  
Forest Conservation Variance  
Tracking # 02-19-3100

Dear Mr. Brittain:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on November 20, 2019. The requested variance would allow the afforestation requirement to be based on proposed 2.3-acre limit of disturbance (LOD) rather than the entire 38.1-acre school property as well as to remove one specimen tree in order to construct an emergency access road to the track, a handicap accessible sidewalk, and a concession stand to support the athletic facilities. Under full compliance with the Forest Conservation Law, 4.7 acres of afforestation would be owed, and the proposed storm water management (SWM) facility would have to be significantly redesigned to avoid one of the 36 specimen trees on the school campus.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The applicant is seeking to make improvements to existing school facilities. However, full compliance with the afforestation requirement and specimen tree retention does not deprive the petitioner of all beneficial use of the property, as it is currently operating as a high school. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that their plight is due to unique circumstances and not the general conditions of the

neighborhood. The need for the variance arises from the petitioner's request for relief from the full afforestation requirement and location of one of the 36 specimen trees relative to the project's LOD to construct a SWM facility rather than conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The proposed improvements are consistent with the current long standing use of the property. Therefore, we find that granting the requested variance will not alter the essential character of the neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The requested relief is such that a water quality benefit of planting over 0.3 acre of forest offsite would be realized. Moreover, while the project would impact a small amount of Forest Buffer that impact would be mitigated in accordance with a separate Forest Buffer Mitigation variance to that law, and no forest would be cleared. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions that would necessitate this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The requested variance is consistent with the Forest Conservation Law given that 35 of 36 specimen trees would be protected, the one acre of forest would remain, and over 0.3 acre of afforestation would be provided within an existing Forest Conservation Easement. Consequently, we find that this criterion has been met.

Based on our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby granted in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. 0.3 acre (13,068 sf) of afforestation and 3,499-sf of specimen tree mitigation shall be addressed by purchasing 16,567 sf of planting credit at an EPS-approved forest planting bank. If no bank credit is available or other offsite planting location can be obtained, a total \$9,111.85 fee in lieu of planting may be paid to Baltimore County (\$7,187.40 for afforestation and \$1,924.45 for specimen tree mitigation). A letter authorizing use of a planting bank is enclosed for your use. Either the executed planting bank letter documenting purchase of the planting credit shall be returned to EPS or the fee paid prior to EPS approval of any permit.

Mr. Robert J. Brittain  
Franklin High School  
Forest Conservation Variance  
December 4, 2019  
Page 3

2. The following note must be on all plans for this project:

A variance was granted by Baltimore County EPS to the Forest Conservation Law on December 4, 2019 to allow the afforestation requirement to be based on the 2.3-acre limit of disturbance rather than the entire 38.1-acre school property and to remove one specimen tree. Conditions were placed on this approval to ensure the goals of the Forest Conservation Law are met including protecting the remaining 35 specimen trees and 1.0 acre of forest onsite as well as offsite afforestation and specimen tree mitigation.

3. A FCP revised to reflect the conditions of this variance must be approved by EPS and its mylar subsequently submitted to EPS for signature prior to approval of any Environmental Agreement or permit.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submission of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely,

David V. Lykens  
Director

DVL/ges

Enclosure

c. (w/encl.) Mr. Merrill Plait, Board of Education

Mr. Robert J. Brittain  
Franklin High School  
Forest Conservation Variance  
December 4, 2019  
Page 4

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

---

BCPS Representative

Date

---

Printed Name